

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PAVEL GLAMAZDA and ULYANA  
GLAMAZDA,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

NO: 12-CV-5100-TOR

ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS PLAINTIFFS'  
COMPLAINT

BEFORE THE COURT is Defendant's Motion to Dismiss Plaintiffs' Complaint (ECF No. 15). This matter was heard without oral argument on January 9, 2013. The Court has reviewed the relevant pleadings and supporting materials, and is fully informed.

BACKGROUND

On July 10, 2012, Plaintiffs Pavel Glamazda and Ulyana Glamazda filed a complaint in Small Claims Department of Benton County District Court alleging that Carl Johnson and Trina Gonzalez, employees of the United States Social

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1 Security Administration (“SSA”), mismanaged their benefits, intentionally  
2 withheld benefits, and refused to adjust their benefit amounts. ECF No. 1-1. The  
3 case was removed to this Court, and the Court subsequently granted the United  
4 States’ motion to be substituted as defendant. ECF No. 1, 12. Presently before the  
5 Court is Defendant’s Motion to Dismiss Plaintiffs’ Complaint for lack of subject  
6 matter jurisdiction because Plaintiffs failed to exhaust administrative remedies.

### 7 DISCUSSION

8 Judicial review of claims arising under Title XVI of the Social Security Act  
9 is governed by 42 U.S.C. § 405(g). Section 405(g) “clearly limits judicial review  
10 to a particular type of agency action, a ‘final decision of the Secretary made after a  
11 hearing.’” *Califano v. Sanders*, 430 U.S. 99, 108 (1977); *see also Subia v. Comm’r*  
12 *of Social Sec.*, 264 F.3d 899, 902 (9th Cir. 2001). Thus, “[a] claimant’s failure to  
13 exhaust the procedures set forth in the Social Security Act, 42 U.S.C. § 405(g),  
14 deprives the district court of jurisdiction.” *Bass v. Social Sec. Admin.*, 872 F.2d  
15 832, 833 (9th Cir. 1989). However, courts may waive the exhaustion requirement  
16 when a plaintiff makes a claim that is (1) collateral to a substantive claim of  
17 entitlement, (2) colorable in its showing that denial of relief will cause irreparable  
18 harm, and (3) one whose resolution would not serve the purposes of exhaustion.  
19 *Kildare v. Saenz*, 325 F.3d 1078 (9th Cir. 2003); *see also Subia*, 264 F.3d at 902

1 (court may also waive exhaustion requirement if plaintiff asserts colorable  
2 constitutional claims).

3 On February 24, 2012, Plaintiffs filed a request for reconsideration of a  
4 reduction in their SSI payments. The reduction was based on a finding that  
5 Plaintiffs were receiving a rental subsidy because their landlord, who was also their  
6 daughter, reported that she charged them less rent than she would have charged a  
7 non-relative for the same space. On July 13, 2012, Ms. Gonzalez denied Plaintiffs'  
8 request for reconsideration based on the same reports by Plaintiffs' daughter.<sup>1</sup>  
9 The denial of reconsideration included notification that Plaintiffs had 60 days to  
10 ask for a hearing if they disagreed with the decision. ECF No. 16-1. Plaintiffs also  
11 received a pamphlet advising them of the four steps for appeal and the  
12 consequences for failing to file a timely appeal, including the loss of right to any  
13 further review.

14  
15 <sup>1</sup> The record before the Court shows that after filing the instant lawsuit, Plaintiffs  
16 provided the SSA with a statement from their daughter reporting that she was not  
17 charging her parents less rent than she would charge non-relatives for the same  
18 space. ECF No. 16 at 3. Thus, as of October 8, 2012, Plaintiffs received back  
19 payments for July 2012 – October 2012, and are currently receiving the maximum  
20 amount of SSI payments each month. ECF No. 16-3.

1 Plaintiffs' Complaint does not indicate that they pursued any administrative  
2 appeals past the initial request for reconsideration. Nor do Plaintiffs' allege that  
3 they requested or received a hearing before an administrative law judge, or  
4 received a final decision. Furthermore, the Court finds no colorable constitutional  
5 claim or alternate basis for waiver of the exhaustion requirement. Thus, the Court  
6 finds Plaintiffs failed to exhaust their administrative remedies and the Complaint  
7 must be dismissed for lack of subject matter jurisdiction.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

9 1. Defendant's Motion to Dismiss Plaintiffs' Complaint, ECF No. 15, is

10 **GRANTED** without prejudice.

11 The District Court Executive is hereby directed to enter this Order, enter  
12 Judgment accordingly, provide copies to the parties, and **CLOSE** the file.

13 **DATED** this 16<sup>th</sup> day of January, 2013.

14 *s/ Thomas O. Rice*

15 THOMAS O. RICE  
16 United States District Judge  
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